

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF OKLAHOMA**

THE CHEROKEE NATION, )  
Plaintiff, )  
v. )  
MCKESSON CORPORATION; ) Case No. 18-cv-56-Raw-SPS  
CARDINAL HEALTH, INC.; )  
CARDINAL HEALTH 110, LLC; )  
AMERISOURCEBERGEN DRUG CORP.; )  
CVS PHARMACY, INC.; )  
OKLAHOMA CVS PHARMACY, L.L.C.; )  
WALGREEN CO.; )  
WAL-MART STORES, INC. )  
Defendants. )  
)

**STATUS REPORT**

Plaintiff respectfully submits this status report in advance of the December 11, 2020, 10:00 a.m. discovery status conference. The Parties agreed to a schedule and process by which to prepare and exchange this Report to be filed as a Joint Status Report. The agreement was:

On November 23, 2020, Plaintiff provided Defendants with a draft Joint Status Report with Plaintiff's summary and positions on disputed issues. The draft Joint Status Report was generally in the format of Sections A, B, and C below.

On November 30, 2020, Defendants provided their proposed edits to the Joint Status Report and included Defendants' response portions on disputed issues.

On December 2, 2020 Defendants provided further revisions to the Joint Status Report.

On December 4, 2020, Plaintiff provided its revisions in response to Defendants' positions.

On December 7, 2020, was the agreed deadline for Defendants to provide their final additions to their inserts on the Joint Status Report.

However, on the afternoon of December 7 Defendants advised Plaintiff for the first time they object to filing any of the summaries of the discovery impasses below in Section C, after having already drafted and exchanged the positions included below.

Since the parties had agreed to the process and exchanged the version of positions in Section C below—and Defendants had an opportunity to make any further additions they wished to include by the agreed-upon final revision date of December 7, 2020, Plaintiff is filing this status report and notes Defendants' objection.

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## **I. Status of Discovery**

All parties have served and responded to numerous written discovery requests. The parties are in the process of collecting documents and conferring on certain objections and the scope of discovery, including search terms and custodians.

### **A. Written Discovery**

Below is a timeline of the written discovery process to date.

1. Fact discovery began on June 11, 2020. *See D.E. 160.*

2. On July 27, 2020, the Distributor Defendants<sup>1</sup> served their First Set of Requests for Production of Documents and First Set of Interrogatories on Cherokee Nation.
3. On July 30, 2020, the Pharmacy Defendants<sup>2</sup> served their First Set of Requests for Production on Cherokee Nation.
4. On August 17, 2020, Cherokee Nation served its First Set of Requests for Production on All Defendants; First Set of Requests for Production to CVS, Walgreens, and Walmart; and First Set of Requests for Production to McKesson.
5. On August 26, 2020, Cherokee Nation requested and Defendants agreed to a 30-day extension to respond to Defendants' initial discovery requests.
6. On September 15, 2020, the Pharmacy Defendants served their Second Set of Requests for Production on Cherokee Nation.
7. On September 16, 2020, all Defendants served responses and objections to Cherokee Nation's discovery requests served on August 17.
8. On September 24, 2020, CVS served its First Set of Interrogatories on Cherokee Nation.
9. On September 25, 2020, Cherokee Nation served Responses and Objections to the Distributor Defendants' First Set of Requests for Production and First Set of Interrogatories.
10. On September 28, 2020, Cherokee Nation served Responses and Objections to the Pharmacy Defendants' First Set of Requests for Production.

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<sup>1</sup> The Distributor Defendants are McKesson Corporation ("McKesson"); Cardinal Health, Inc. and Cardinal Health 110, LLC (collectively "Cardinal Health"); and AmerisourceBergen Drug Corporation ("ABDC").

<sup>2</sup> The Pharmacy Defendants are CVS Pharmacy, Inc. and Oklahoma CVS Pharmacy, L.L.C. (collectively "CVS"); Walgreen Company ("Walgreens"); and Walmart Inc. ("Walmart"). Effective February 1, 2018, Wal-Mart Stores, Inc. changed its name to Walmart Inc.

11. On October 15, 2020, Cherokee Nation served Responses and Objections to the Pharmacy Defendants' Second Set of Requests for Production.
12. On October 21, 2020, Walgreens served its First Set of Interrogatories on Cherokee Nation.
13. On October 27, 2020, Walmart served its First Set of Interrogatories on Cherokee Nation.
14. On November 11, 2020, Cherokee Nation served its First Set of Interrogatories on all Defendants.
15. On November 11, 2020, Cherokee Nation served its First Set of Interrogatories on the Pharmacy Defendants.
16. On November 20, 2020, Cherokee Nation served Responses and Objections to Walgreens' First Set of Interrogatories.
17. On November 27, 2020, Cherokee Nation served Responses and Objections to Walmart's First Set of Interrogatories.
18. On December 2, 2020, the Distributor Defendants served their Second Set of Interrogatories on Cherokee Nation.
19. Third-party discovery is open. *See* Amended Case Management Order, D.E. 204, ¶ 9. To date, Defendants have served subpoenas for documents on the third parties identified in Annex A below.

To date, only one third party has made a small production (on November 27) in response to any of the 312 subpoenas served by Defendants that are listed in Annex A, though Defendants have had numerous meet and confer discussions with certain of these third parties. Very recently, after certain of these discussions had advanced and certain subpoenas had been pending for over a month, the Office of the Oklahoma Attorney General contacted defense counsel to assert that they are representing nearly all state entities, certain cities, towns and counties, and potentially

additional governmental agencies, with respect to the third party subpoenas issued in this matter. On November 25, Defendants received several near identical letters from the Attorney General's office asserting overarching objections to the majority of third party subpoenas listed in Annex A. Defendants maintain that most of the Attorney General's positions with respect to third party discovery in this matter are procedurally and substantively improper. In light of these objections, Defendants are in the process of scheduling additional meet and confers with these third parties, now to involve the Attorney General's office representatives. The Defendants intend to participate in good faith, but may need to present certain issues to the Court if the parties cannot agree.

#### **B. Discovery Produced to Date**

*Cherokee Nation's Position:* The chart below identifies the number of case-specific documents each party has produced to date in this litigation:

<b>Party</b>	<b>Number of documents</b>
Cherokee Nation	439
ABDC	44
Cardinal Health	6,151
McKesson <sup>3</sup>	47

In addition to the documents identified on the chart, Walgreens responded, in part, to four of Cherokee Nation's document requests by citing Bates numbers of responsive documents Walgreens previously produced in the MDL. Walmart responded in the same manner to two of Cherokee Nation's document requests. Likewise, in responding to document requests all

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<sup>3</sup> Although McKesson and ABDC have produced less than 50 documents specific to this case, these include spreadsheets of certain data that Cherokee Nation requested.

Defendants have made general reference to millions of pages of productions from the MDL, albeit without referencing any particular documents or Bates ranges.

*Defendants' Position:* Defendants have produced millions of documents in this action, including many documents relevant to this matter produced in *In Re National Prescription Opiate multidistrict litigation* pending in the U.S. District Court for the Northern District of Ohio (“MDL”). Plaintiff’s chart of “case-specific documents” available to Cherokee Nation is, therefore, inaccurate. Distributor Defendants have produced transactional and other data regarding customers within the fourteen counties comprising the Cherokee Nation jurisdictional area, including spreadsheets with a significant amount of data that Cherokee Nation requested, and logs or indexes of their document productions. Walgreens responded, in part, to four of Cherokee Nation’s document requests by citing Bates numbers of responsive documents Walgreens previously produced in the MDL. Walmart responded in the same manner to two of Cherokee Nation’s document requests.

On November 21, 2020, Cherokee Nation made its first production of documents in this case, consisting of 439 documents.

### C. Meet and Confer Process

Starting in late October the parties have conferred concerning the scope of relevant discovery for approximately 4.5 hours over four telephone calls and through written correspondence. The parties have not resolved their disputes over these issues outlined below.

#### 1. Preliminary Statements about the Status and Scope of Discovery

*Cherokee Nation’s Position:* This case was remanded from the MDL as the “tribal track” bellwether case. The JPML remanded the case as part of what the MDL court described as a coordinated “hub and spoke” model of the national opioid litigation. This model contemplated that

certain national discovery would occur in the MDL, and that case-specific discovery and trials would occur in the transferor jurisdictions of the remanded cases. The MDL court has spent nearly three years dealing with disputes about the appropriate “scope” of discovery in cases brought by government entities against opioid distributors and retail pharmacies. For example, the MDL court has issued rulings on topics such as the relevant time period of discovery and the geographic area. In conferring with Defendants on discovery issues, Cherokee Nation’s position has been that if the MDL court (or the MDL Special Master) has entered a ruling on a dispute about the “scope” of relevant discovery, then there is no reason to re-litigate the same issue here. Instead, the MDL ruling should be applied to corresponding discovery issues in this case, unless the parties agree otherwise. Cherokee Nation’s positions below are consistent with the discovery rulings on corresponding issues in the MDL. Defendants argue otherwise, but they appear to be relying on a discovery ruling the court revised.

Finally, Defendants continue to mention “millions of documents” they produced into the MDL document repository. Such documents include every document Defendants have produced in any opioid litigation nationwide, perhaps hundreds of millions of pages from dozens of different cases brought by states, cities, and counties, as well as documents Defendants produced to state or federal investigators during numerous investigations into their misconduct over the years. It is indeed possible some of these documents are relevant to this case. If any such documents are responsive to Cherokee Nation’s pending document requests or interrogatories, Defendants should simply identify them. The documents do not need to be produced again. But merely referencing the existence of millions of documents is not helpful and does not discharge Defendants’ discovery responsibilities.

Defendants' Preliminary Statement: As noted in the joint status report filed on October 21, 2020 (D.E. 206), Defendants continue to be concerned about the imbalance of discovery and the ability to meet the fact discovery deadline in light of Plaintiff's delayed and minimal document productions to date. As the Court is aware, Plaintiff has had access to millions of Defendants' documents and hundreds of transcripts of depositions and witness interviews of Defendants' witnesses for months. *See* Joint Status Report, p. 4 (D.E. 206). Distributor Defendants have also provided detailed logs or indexes about their productions and produced substantial information relating to shipments and customers of prescription opioids in the Cherokee Nation jurisdictional area. By contrast, Plaintiff made its first production of documents just over two weeks ago, and produced only 439 documents. In other opioid cases involving similarly expansive claims and allegations as those at issue here, plaintiffs have had to produce many thousands of documents across a wide array of government functions and custodians.

When this case was remanded from the MDL, the JPML did not indicate that this Court would in any way be bound by the MDL court's rulings on discovery issues in cases involving different plaintiffs, different defendants, different claims, and different governing law. While the MDL court's discovery rulings may at times be instructive, Defendants' position is that this Court should resolve discovery disputes in the context of the needs of this case rather than merely import all of the MDL rulings as Cherokee Nation suggests. This is the approach that other courts have taken with respect to other opioid cases remanded from the MDL. Though this Court should not be bound by the MDL court's rulings, Cherokee Nation is entitled to take the position that there is no need to re-litigate discovery issues previously resolved in the MDL. But Cherokee Nation must be consistent and it cannot argue—as detailed further below—that a few cherry picked MDL rulings resolve certain discovery issues while it seeks to re-litigate MDL rulings that contradict its

position on other issues. As discussed below, MDL rulings support Distributor Defendants' position regarding issues that Plaintiff raises in this report as they pertain to those Defendants.

Finally, Defendants note that, to the extent any party has a dispute regarding discovery, the proper way to present that dispute for decision by this Court is through motion and not via status reports. *See Joint Status Report, p. 10 (D.E. 120)* ("A joint status report is not the proper vehicle for raising, or responding to, substantive legal arguments on the merits of forthcoming motions to dismiss. Defendants reserve the right to brief these issues at a later time.") (quoting Defendants' position).

## **2. Relevant Opioid Products**

*Cherokee Nation's Position:* Cherokee Nation's discovery requests seek certain categories of Defendants' documents and communications concerning opioids. Defendants do not dispute that the term "opioids" includes commonly abused opioid products such as codeine, but they nevertheless resist discovery into their practices and data concerning codeine and various other opioids by claiming it would be overly burdensome to look for such documents. Defendants' position should be rejected for numerous reasons.

***First,*** on the question of relevance, all commonly-abused opioids are clearly relevant. Although certain notorious "Schedule II" opioid products like fentanyl or high-dose OxyContin are among the strongest and the most deadly products, they are not necessarily the most widely abused in every geographic area. Less potent opioids in Schedule III through Schedule V—such as certain codeine-related products—are also highly important to this case. There is no basis to exclude them based on relevance.

***Second,*** Plaintiff's Amended Complaint is not limited to only Schedule II opioids. Rather, the complaint puts at issue all opioids as defined by federal law, including codeine. *See, e.g., Am.*

Compl. at ¶¶ 30–31, D.E. 136 (April 10, 2020) (defining “opioids” broadly to “include *all drugs* derived in whole or in part from the opium poppy—natural, synthetic, and semi-synthetic opioids”). Likewise, the Plaintiff’s discovery requests define “opioids” by reference to definition set forth by the Controlled Substances Act, 21 U.S.C. § 802, which includes codeine and other opioid products.

**Third,** the Pharmacy Defendants’ relevant legal duties under federal regulations are not limited to only Schedule II opioids. Indeed, numerous federal cases have found that legal duties concerning controlled substances are relevant and applicable in opioid lawsuits. *See, e.g.,* 21 C.F.R. § 1306.04(a) (imposing responsibilities on pharmacists for the proper dispensing of all controlled substances without regarding for the schedule).<sup>4</sup>

**Fourth,** Pharmacy Defendants themselves have sought third-party discovery of non-Schedule II opioids—and even discovery of non-opioid drugs. *See, e.g.,* Walmart subpoena to Indian Health Service, D.E. 234-1 (seeking discovery of “Illicit Drugs,” which Walmart defined broadly to include all Schedules for all drugs: “**any scheduled drug** as defined in 21 U.S.C. § 812 that was illegally manufactured, obtained, diverted, or used.”); Walgreens subpoenas to 21 Oklahoma Drug Courts, D.E. 214-1–228-1, D.E. 233-1, D.E. 235-1–239-1 (seeking discovery of “Illicit Drugs,” which under Walgreens’ definition would include all Schedules for all drugs: “any Schedule I drug, *as well as any drug monitored by the DEA*” (emphasis added)).

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<sup>4</sup> *See, e.g., In re Nat'l Prescription Opiate Litig.*, No. 1:17-MD-2804, 2019 WL 3917575, at \*7–9 (N.D. Ohio Aug. 19, 2019) (finding that distributors of controlled substances have legal duties under the Controlled Substances Act, 21 U.S.C. §§ to identify, investigate, decline to ship, and report suspicious orders of controlled substances); *In re Na 'l Prescription Opiate Litig.*, No. 1:17-MD-2804, 2020 WL 5642173, at \*2 (N.D. Ohio Sept. 22, 2020) (“The Court overruled the Pharmacy Defendants’ principal contention, and the Court reaffirms its conclusion here: ‘all registrants [including pharmacies] have an affirmative obligation to protect not only against diversion via theft but also other forms of diversion more broadly.’”).

**Fifth**, half of the Defendants in this case—McKesson, Cardinal, and ABDC—agree that opioids such as codeine are within the scope of discovery regardless of whether they are classified Schedule II opioids. The Distributor Defendants have agreed to produce discovery relating to the opioid products Cherokee Nation has requested, including codeine products.

**Sixth**, the Pharmacy Defendants were ordered to produce data and documents about numerous non-Schedule II drugs in the MDL including benzodiazepines and muscle relaxers (which are Schedule IV and some are not even scheduled).

Pharmacy Defendants nevertheless maintain that discovery should be strictly limited to only eight specific Schedule II opioid products. Cherokee Nation is not aware of any MDL order holding that non-Schedule II opioids are irrelevant in a case in which Pharmacies' dispensing practices are at issue. As mentioned above, in 2020 the MDL ordered Defendants' to produce data regarding numerous Schedule IV controlled substances. *See also* Discovery Ruling No. 3 at 6 n.2, *In Re: National Prescription Opiate Litigation*, D.E. 762 (“Given some apparent confusion by a few defendants, the Special Master makes clear that this ruling includes discovery related to Schedule II drugs during earlier periods of time when they were listed as Schedule III drugs (e.g. hydrocodone combination products).”).

And regardless, as the MDL has recognized, the scope of discovery may change based on the specific facts of the case. During the parties’ meet and confers, Cherokee Nation has explained to Defendants that codeine-related products, regardless of Schedule, are relevant to this case because of the high prevalence of abuse of such products among Native Americans. The National Institute on Drug Abuse of the United States Department of Health and Human Services has also held that non-Schedule II codeine products are harmful and widely abused. For example, the agency wrote that “[d]rinking promethazine-codeine cough syrup mixed with soda (a combination

called syrup, sizzurp, purple drank, barre, or lean) was referenced frequently in some popular music beginning in the late 1990s and has become increasingly popular among youth in several areas of the country.” *See DrugFacts, Cough and Cold Medicine Abuse*, NATION INSTITUTE OF DRUG ABUSE (May 2014), [www.drugabuse.gov/sites/default/files/drugfacts\\_cough\\_cold\\_meds.pdf](http://www.drugabuse.gov/sites/default/files/drugfacts_cough_cold_meds.pdf). (warning that “when abused, promethazine-codeine cough syrup presents a high risk of fatal overdose due to its effect of depressing the central nervous system, which can slow or stop the heart and lungs. Mixing with alcohol greatly increases this risk.”).

Moreover, Defendants have previously argued that *all opioid products* are relevant to this case—regardless of Schedule. In connection with the motion practice over whether there was federal jurisdiction, Defendants relied on non-Schedule II opioids as part of the argument in favor of McKesson’s removal. *See In Re: National Prescription Opiate Litigation*, MDL No. 2804, ECF No. 1052 (Oct. 28, 2018). McKesson’s brief informed the MDL court about volumes of non-Schedule II opioid distributions and argued that:

[the] ARCos data [cited by Cherokee Nation] does not include *numerous prescription opioid products that are within the scope of the [Cherokee] Nation’s claims, such as Tramadol, propoxyphene, and others.* See Compl., ¶ 29 (defining the ‘opioid[s]’ put at issue by the Nation’s claims as ‘all drugs derived in whole or in part from the opium poppy’). McKesson distributed a large number of dosage units for these prescription opioid products to federal government facilities in the Cherokee Nation’s counties, and the Nation’s calculation ignores those opioid distributions.

*Id.* Thus, in opposing remand to state court McKesson argued that the MDL court needed to consider non-Schedule II opioids (like Tramadol, codeine, and others). Therefore, having relied on data regarding *all* opioids—including all Schedules—to argue for federal jurisdiction, Defendants cannot credibly argue that non-Schedule II opioids are beyond the scope of discovery.

Distributor Defendants' Position: The distribution data produced by the Distributor Defendants in this litigation is not limited with respect to particular medications and does not omit any opioid medications. As noted in Plaintiff's statement, the Distributor Defendants have agreed to produce discovery relating to the opioid products Cherokee Nation has requested. There seems to be no dispute between Plaintiff and the Distributor Defendants with respect to this issue.

Pharmacy Defendants' Position: This issue is not yet ripe. The parties have engaged in a series of fruitful discussions and have been very close to coming to an agreeable compromise. As part of those discussions, Plaintiff agreed that the relevant opioids would be the same eight Schedule II opioids at issue in the MDL with one exception: it sought to replace one MDL Schedule II opioid (tapentadol) with many different codeine products. While the Pharmacy Defendants agreed to codeine products that were—like the MDL opioids—Schedule II medications, Plaintiff insists on including *all* schedules of codeine products—an overbroad position that would implicate products like Tylenol with codeine (Schedule III) or Robitussin AC (Schedule V). The MDL Court has explained that the drugs at the root of the alleged “opioid crisis” are Schedule II drugs, not drugs such as Tylenol with codeine. Discovery Ruling No. 2, *In Re: National Prescription Opiate Litigation*, Case: 1:17-md-02804-DAP, Document 693 at 2-3.

Plaintiff's current request to now include *all* “opioid and opioid-related products as defined under the Controlled Substances Act” would be an enormous departure from the scope of relevant medications at issue in the MDL and many other state cases, and would create enormous inefficiencies with respect to the Pharmacy Defendants' ability to collect and produce data. The Pharmacy Defendants seek only to be consistent with the scope of medications at issue in the MDL and other opioid-related cases and never joined the filing that Plaintiff now erroneously attributes to all Defendants. As noted, the MDL court already has ruled that medications like Tylenol with

codeine are “clearly peripheral” and “barely relevant to plaintiffs’ claims.” *Id.* at 3 (denying plaintiffs’ request for production of non-Schedule II medications).

While the Pharmacy Defendants remain willing to add Schedule II codeine products to the list of relevant opioids, Plaintiff’s new demand of *all* schedules of *all* opioid and opioid-related products is unreasonable. No opioid-related case to date has permitted such expansive and irrelevant discovery. Broadening the scope here would create enormous inefficiencies and delay and is not proportional to the needs of the case. It would, for example, require the re-review of all documents previously reviewed in other opioid litigation and made available to Plaintiff in this case to determine relevancy in light of the additional medications requested.

### **3. Relevant Geographic Scope**

*Cherokee Nation’s Position:* The relevant geographic area for discovery should be the Cherokee Nation and surrounding counties. This includes the 14 counties in Northeastern Oklahoma of Cherokee Nation’s reservation, plus the 7 surrounding Oklahoma counties of Pawnee, Payne, Creek, Okmulgee, Pittsburg, Haskell, and Le Flore; and 9 counties next to Cherokee Nation in surrounding states: McDonald, Newton, Jasper, Benton, Washington, Crawford, Sebastian, Labette, and Montgomery.

The rationale for the geographic scope is that controlled substances travel. Prohibiting Plaintiff from discovering information about the activities of pharmacies located outside Cherokee Nation (and distributing activities to these pharmacies) would exclude, for example, the nearby pharmacies that dispense opioids that flood the Cherokee Nation. Many of them are only a matter of miles away from Cherokee Nation. Notably, in opposing motions to dismiss in this case, Defendants argued it was arbitrary to assume that pharmacy locations serve only customers within a close geographic proximity; meaning the Defendants have effectively conceded Cherokee Nation’s position regarding the relevance of data from pharmacies located in bordering counties.

Additionally, this geographic scope is necessary to derive valid statistics showing how patterns of opioid transactions may differ across locations, which is relevant to establishing what the defendants knew about the potential diversion of controlled substances.

Moreover, the issue of the relevant geographic scope of distribution and dispensing data was litigated extensively in the MDL through briefs, hearings, and multiple orders. The MDL has “repeatedly” recognized that “certain **evidence from beyond the plaintiff jurisdictions is relevant to their claims.**” Order at 2, Case: 1:17-md-02804-DAP, D.E. 3389 (July 21, 2020) (citing rulings). There is no reason to depart from the principles established in the MDL concerning the appropriate scope of geographic discovery in a case similar to this one.

The MDL, for example, ordered Pharmacy Defendants to produce transactional dispensing data for the entire state of Ohio (88 counties) in a case brought by two counties in northern Ohio. See Order at 3, *In Re: National Prescription Opiate Litigation*, MDL 2804, D.E. 3341 (June 17, 2020) (holding that “transactional dispensing data for Ohio is likewise relevant and proportional to the needs of Track Three.”). This involved producing data for over 500 of Defendants’ pharmacy locations. The MDL court also ordered Walmart, CVS, and Walgreens to produce **distribution** data in their role as opioid distributors for the entire state of Ohio. Order Regarding Geographic Scope of Discovery at 7, 11, D.E. 3371 (July 8, 2020) (requiring the production of distribution data for the state of Ohio in response to plaintiffs’ request for production no. 4 and restating that the Court found that “dispensing data for Ohio is likewise relevant and proportional to the needs of Track Three”).

Similarly, in a different MDL case brought by a West Virginia county and city, the MDL court ordered some of the same Defendants here to produce transactional distribution data from an entire three-state area—all of West Virginia, Kentucky, and Ohio. See Order Regarding Track Two

Cases at 5, D.E. 2950 (Nov. 22, 2019) (“The Court concludes the appropriate geographic scope of discovery of transactional data should be for the states of Ohio, West Virginia, and Kentucky.”).<sup>5</sup>

To try to distinguish Judge Polster’s discovery orders, Pharmacy Defendants rely on a New York trial court order (applying New York state civil procedure) in a case brought by two county governments, Nassau and Suffolk Counties. *See Decision and Order, In re: Opioid Litigation*, Index No. 400000/2017, D.E. 3388 (Jan. 28, 2020). Defendants claim the judge “ruled” that the geographic scope of certain discovery should be limited to the plaintiffs’ county-specific jurisdiction. So far as it appears, however, the geographic scope in that case was actually framed by an agreement, not a ruling. The plaintiffs did not seek statewide discovery of pharmacy data.

Regardless, the New York county case is not comparable. Cherokee Nation’s discovery request is proportional to this case. In terms of burden, there were approximately 185 of Defendants’ pharmacy locations in those two New York counties, according to DEA data. In this case there are about 194 of Defendants’ Pharmacy locations in the relevant counties in Oklahoma, Arkansas, Missouri, and Kansas *combined*. The burden is not materially different.

There is also a much stronger argument for a broader geographic scope in this case. The population density in Nassau County, New York, is about 4,700 people living per square mile, which is extremely dense. By comparison, in Eastern Oklahoma along the Arkansas border, the population density is about 50 people living per square mile (8000% less). This means fewer

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<sup>5</sup> See also Cardinal Letter to Plaintiffs dated Dec. 13, 2019, Exhibit to Plaintiffs’ Motion to Compel Discovery, *Huntington v. AmerisourceBergen Drug Corp.*, Case 3:17-cv-01362, D.E. 140-2 (Jan. 24, 2020) (“Cardinal Health will also be producing transactional data for West Virginia, Kentucky, and Ohio consistent with Judge Polster’s order, and expects to do so by years’ end.”); ABDC’s Response to Plaintiffs’ Motion to Compel, *Huntington v. AmerisourceBergen Drug Corp.*, Case 3:17-cv-01362, D.E. 193 (Mar. 4, 2020) (stating that “ABDC produced transactional data for West Virginia from 2002 through 2018 and Ohio from 2007 through 2017 [and] Kentucky from 2010 through November 30, 2018.”).

pharmacies per square mile, and people may drive farther. Most of the relevant pharmacy locations in Arkansas, for example, are within about 25 miles from Cherokee Nation. And some are only a few miles away (including some located in what the United States Census Bureau has designated as the “Fort Smith Metropolitan Statistical Area,” which is a five-county area including three Western Arkansas counties and part of Cherokee Nation). In sum, as the MDL court recognized, there is no reason to arbitrarily cut-off discovery of Defendants’ activities at the border of a plaintiff’s jurisdiction. Rather, “evidence from beyond the plaintiff jurisdictions is relevant to their claims.” This is even confirmed by Defendants’ own geographically expansive third party discovery requests, whose scope is broader than what Defendants are asking this Court to impose on Plaintiff.<sup>6</sup>

Distributor Defendants’ Position: The relevant geographic scope for discovery from the Distributor Defendants in this case should be limited to the 14 counties containing Cherokee Nation’s jurisdictional area, in accordance with the allegations in the Amended Complaint and the rulings in the MDL.

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<sup>6</sup> See, e.g., Cardinal subpoena to Oklahoma Board of Medical Licensure and Supervision (no docket number) (seeking discovery for the entire state of Oklahoma relating to opioid diversion); Walgreens subpoena to Oklahoma Bureau of Narcotics, D.E. 205-1 (seeking discovery without geographic limitation of “[a]ll Documents reflecting or relating to Your registering and discipline of registrants on a summary basis by year.”); Walmart subpoena to Indian Health Services, D.E. 234-1 (seeking discovery without geographic limitation of documents relating to opioid abuse). It is also necessary to point out that the Pharmacy Defendants’ argument regarding geographic scope is filled with inaccurate statements. The Sixth Circuit did not reverse the MDL court’s ruling on national dispensing; rather, it stayed the ruling and eventually decided the issue was moot. The New York court’s order did not reject the plaintiffs’ requests for statewide discovery; the plaintiffs request was limited to several counties. They claim Cherokee Nation “has no way of determining whether its members use pharmacies that fall outside of the borders of the reservation”; however, Cherokee Nation actually informed Defendants that the exact opposite is true. They also claim that this case is unique because Cherokee Nation has “overlapping jurisdiction with other governments”—failing to acknowledge that cities, counties, states, and the federal government, all of which have brought actions against these defendants, also have aspects of overlapping jurisdiction.

Plaintiff alleges that Cherokee Nation “is a sovereign Indian nation that occupies all or part of 14 Counties in Northeast Oklahoma,” an area it defines as the “14 Counties” and the “Cherokee Nation Jurisdictional Area.” Am. Compl. ¶ 17, n.11. Plaintiff’s principal claim against Distributor Defendants is that they allegedly “flooded” these 14 Counties “with opioid pills” and that this alleged “oversupply” of opioids purportedly contributed to an opioid crisis or epidemic in Cherokee Nation. *E.g., id.* ¶¶ 7, 33. Based on this claim, Plaintiff seeks damages and other relief for the alleged injuries that Cherokee Nation has purportedly suffered, including “expenses Cherokee Nation has incurred or will incur” and “increased costs to Cherokee Nation’s healthcare, criminal justice, social services, welfare, and education systems” in relation to the opioid crisis. *E.g., id.* at 82 (Prayer for Relief). Based on Plaintiff’s own allegations, discovery beyond the 14 Counties, including areas outside the State of Oklahoma, is either irrelevant or not proportional to the needs of the case.

The MDL rulings Plaintiff cites did not require Distributor Defendants to provide discovery beyond the two counties at issue in that case. Contrary to Plaintiff’s suggestion, the MDL court limited the geographic scope of discovery regarding “decentralized, customer-specific materials, such as sales call notes and transactional data”—including distribution and shipping data from Distributor Defendants—to only the two counties that brought the case. *See In Re: National Prescription Opiate Litigation*, MDL No. 2804, Order at 2–4, D.E. 762 (July 17, 2018). To the extent MDL rulings expanded the geographic scope of discovery beyond the counties at issue, it did so with respect to dispensing data from pharmacy defendants and “with one eye toward future bellwether cases and also State-court litigation—in other words, with ensuring plaintiffs and defendants begin now with discovery for *other* cases that have a fair chance of going to trial.” *Id.* at 3; *see In Re: National Prescription Opiate Litigation*, MDL No. 2804, Order at 3, D.E. 3341

(June 17, 2020) (ordering the production of “transactional dispensing data” in a case involving only pharmacy defendants); Order Regarding Track Two Cases at 5, D.E. 2950 (ordering production of transactional data with respect to Pharmacy defendants). These rulings do not support extending the geographic scope of discovery from Distributor Defendants in this case.

*Pharmacy Defendants’ Position:* This issue is not yet ripe. Plaintiff’s proposal is unnecessarily broad, exceedingly burdensome, and would greatly complicate discovery in this case. To start, Plaintiff’s claims relate to prescription opioids that the Pharmacy Defendants distributed to and dispensed within the borders of Cherokee Nation. What the Pharmacy Defendants distributed to and dispensed anywhere outside the borders of Cherokee Nation is not relevant. Moreover, Plaintiff mischaracterizes the MDL rulings, which ordered statewide discovery for only limited topics that were more data-focused and likely available in centralized repositories (i.e., transactional distribution and dispensing data). The majority of discovery in the MDL was limited geographically to the plaintiffs’ jurisdictions in light of the significant burden associated with a broader scope, including, for example, collecting documents and hard copy files from pharmacies and custodians spread across multiple states. Additionally, Plaintiff’s proposal would significantly expand third-party discovery to local government agencies in three additional states. Such an expansion is not warranted under the circumstances.

The Pharmacy Defendants’ position is that Cherokee Nation has sovereignty over only the fee and trust land it identified in its interrogatory responses, and so the relevant geographic scope should include, at most, Cherokee County, Adair County, Sequoyah County, Delaware County, and possibly Mayes and Craig Counties. This proposal is consistent with other courts’ rulings in similar opioid cases in New York and Massachusetts that have limited the geographic scope of discovery to the area immediately encompassing plaintiffs’ jurisdictions and rejected plaintiffs’

requests to expand discovery to encompass an entire state. No court has compelled a pharmacy defendant to produce discovery from pharmacies across State lines.

The MDL Court initially ruled that the pharmacies would have to produce dispensing data on a national scale. But that ruling was reversed by the Sixth Circuit. On remand, the MDL Court limited the scope to the State of Ohio. Both of those rulings had more to do with a desire to create efficiencies in the MDL, and less to do with a relevancy determination. Even if the MDL's ruling on geographic scope were based on relevancy, Cherokee Nation is not like a county or municipality. It has overlapping jurisdiction with other governments. Its request for discovery from a wide swath of land in northeastern Oklahoma will already sweep in sensitive health information about numerous non-Native Americans that is irrelevant to this case. That concern is exacerbated by moving outside of the Cherokee Nation's boundaries.

The Cherokee Nation has informed the pharmacy defendants that it has no way of determining whether its members use pharmacies that fall outside of the borders of the reservation, let alone pharmacies in other States. That kind of fishing expedition, without any good faith basis, should not be permitted.

## **5. Temporal Scope for Discovery**

Cherokee Nation's Position: The relevant discovery period in this case should be basically consistent with what was ordered in the MDL, as there is no reason to re-litigate these rulings. For the start-date, Cherokee Nation believes Defendants should be ordered to produce certain discovery back to January 1, 1996, consistent with the MDL ruling that "distributor defendants shall produce transactional data and Suspicious Order Reports with a cut-off date of January 1, 1996." See MDL Discovery Ruling No. 2 at 11, *In Re: National Prescription Opiate Litigation*, MDL 2804, D.E. 693 (June 30, 2018). The same 1996 start date also applied to distribution activities of the Pharmacy Defendants, as stated in a subsequent MDL ruling:

[T]he pharmacies argue their discovery obligations should be more limited because, unlike the distributor defendants, they distributed opioids only to their own retail stores. The Special Master rejects this argument. The distribution function of a national retail pharmacy implicates exactly the same anti-diversion obligations as any other distributor defendant. . . . Accordingly, the Special Master declines to impose different discovery obligations on the pharmacy defendants than on the other distributor defendants.

MDL Discovery Ruling No. 3 at 7-8, D.E. 762 (July 17, 2018).

Additionally, Cherokee Nation has requested the Pharmacy Defendants produce pharmacy dispensing data back to 2006, which is also consistent with MDL rulings. *See Order on Reconsideration Regarding Scope of Discovery* at 4, *In Re: National Prescription Opiate Litigation*, D.E. 3055 (holding that the temporal scope for pharmacy dispensing data should be from 2006 forward).

Although Plaintiff is not aware of any specific ruling by the MDL court regarding the appropriate start date for relevant documents from the “custodial productions” from Defendants’ witnesses, Plaintiff believes Defendants should produce responsive company documents, emails, memos, etc., from their witnesses’ custodial files going back to 1996 (provided such files can be located after a reasonable search). If no such documents can be located, then Defendants should simply look for responsive documents from their relevant employees for as far back as they exist. In sum, contrary to the argument of some Defendants, there is no basis for a blanket cut-off date of 2006 of witnesses’ documents. This is especially true given the MDL rulings that find certain company documents from 1996 to be potentially highly relevant.

Also, the Defendants themselves have sought discovery of documents going back to 1996 through numerous third-party subpoenas served upon Oklahoma government entities. As just a few examples, Walgreen’s subpoena to the Oklahoma Bureau of Narcotics (D.E. 205-1) requires the agency to produce “annual reports *from 1996 to the present.*” Cardinal’s subpoena to

Oklahoma Board of Medical Licensure and Supervision (no docket number) seeks discovery of “Documents ***from 1996 to present*** regarding the Oklahoma Board of Medical Licensure and Supervision’s policy entitled ‘Use of Controlled Substances for the Treatment of Pain.’” McKesson’s subpoena to Adair County Sheriff (D.E. 232-1) requests “annual reports ***from 1996 to the present.***” Defendants cannot credibly argue that pre-2006 documents are “irrelevant” when they themselves are subpoenaing discovery back to 1996.

For the end-date of discovery collection, Cherokee Nation has proposed an end-date of April 4, 2020, the date Cherokee Nation filed its Amended Complaint. This will maintain consistency with what was done in the MDL *See, e.g., Order Regarding Temporal Scope of Discovery at 1–3, In Re: National Prescription Opiate Litigation, Case: 1:17-md-02804-DAP, D.E. 3399 (July 29, 2020)* (ordering an end date of May 27, 2020—which is the date MDL Track 3 plaintiffs filed their ***amended complaint***—for certain discovery relating to dispensing claims). The 2020 end date is also consistent with the temporal scope of discovery that Defendants are seeking in this case. *See, e.g., Walmart subpoena to Indian Health Services, D.E. 234-1 (served Nov. 10, 2020)* (seeking discovery through 2020).<sup>7</sup>

Finally, Plaintiff has advised Defendants during the conference process that if Defendants can provide a reasonable explanation why it would be disproportionately burdensome to update the document collection of certain witnesses whose custodial files were previously collected in 2018-2019 (in connection with the MDL), then the parties can likely reach an agreement for an earlier cut-off date. But there is no reason for a blanket cut-off. Certainly for any “new” defense

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<sup>7</sup> Some Defendants contend MDL Discovery Ruling No. 2 imposed an end date of 2018 for discovery. On its face, however, that ruling provides no such end date. Rather, it discusses only the begin date for discovery. *See Discovery Ruling No. 2 at 11, In Re: National Prescription Opiate Litigation, Case: 1:17-md-02804-DAP, D.E. 693 (June 30, 2018)*

witnesses/custodians whose electronic files have never been previously collected, there is no logical reason to impose a 2018 cut-off date even though Plaintiff filed its operative complaint in April 2020 (after the case was effectively stayed for nearly 3 years).

*Distributor Defendants' Position:* The Distributor Defendants have already made, and will continue to make, productions consistent with the MDL rulings and with Plaintiff's requested start dates. Consistent with the MDL rulings, Distributor Defendants have produced or will produce available transactional data (to the extent it exists) from January 1, 1996, through 2018, the ending time frame for MDL productions. *See* MDL No. 2804, Order at 11, D.E. 693. They also have produced and will produce responsive documents from 2006 to 2018. *Id.* The MDL order Plaintiff cites does not pertain to information by Distributor Defendants. Collecting and producing additional documents through 2020 would be unduly burdensome to those Defendants and would not be proportional to the needs of the case.

*Pharmacy Defendants' Position:* This issue is not yet ripe for the Court's involvement. The parties have engaged in a series of fruitful discussions and are very close to coming to an agreeable compromise. In fact, the Pharmacy Defendants are not opposed to Plaintiff's request for a start date of January 1, 2006, for transactional dispensing data to the extent such data is reasonably accessible and have been open to discussing Plaintiff's demand for an even earlier January 1, 1996, start date for transactional distribution data. But Plaintiff has not yet provided any justification for seeking discovery from the Pharmacy Defendants dating back until 1996 while Plaintiff refuses to provide discovery dating back to 1996 and instead identifies the "relevant period" for discovery as starting in 2006.

The Pharmacy Defendants proposed an end date for dispensing data of January 2018 because that is when Cherokee Nation asserted its dispensing claims against the Pharmacy

Defendants in state court. This proposal is in line with rulings in other courts. In Track 3 of the MDL, for example, the court ordered dispensing-related discovery to be produced only through the date on which plaintiffs amended their complaints to assert dispensing claims, and even then, limited that order to only certain, discrete categories of dispensing-related discovery. For the vast majority of dispensing-related discovery, the court ordered a time period that ends more than two years before the Track 3 plaintiffs amended their complaints to add dispensing claims. Since Plaintiff asserted its dispensing claims against the Pharmacy Defendants in January 2018—well before it amended its complaint in April 2020 to add distribution claims—there is no reason to tie temporal scope to the later date.

With regard to Plaintiff's distribution-related claims, the Pharmacy Defendants have agreed to produce information up to the date on which they ceased distributing the relevant prescription opioids—a natural end point.

For custodial productions, the Pharmacy Defendants have already collected ESI from many employees in connection with other opioids cases and should not be forced to perform another collection to gather any additional ESI subsequent to the date of the completed collection activity.

## **5. Document Custodians**

*Cherokee Nation's Position:* While the parties are still conferring on issues related to the relevant custodians in this case, it is likely the parties will seek guidance from the Court on this issue at the status conference. Cherokee Nation has identified 18 individuals as the custodians likely to have discoverable documents. Cherokee Nation has collected documents from these individuals and is in the process of reviewing it for production in response to Defendants' document requests. In addition to these 18 witnesses, Defendants have identified an additional 69 custodians for which they ask Cherokee Nation to collect documents. Cherokee Nation is in the process of identifying which of these witnesses are likely to have relevant documents and will

likely agree to search many of them based on Defendants' request. Cherokee Nation has also recently received proposals from Defendants regarding their custodians.

Cherokee Nation's position is that there should be some degree of parity surrounding the number and identity of witnesses/employees the parties agree to search as their respective custodians. For example, to the extent Defendants have identified as relevant custodians, for example, the current and former Principle Chief of Cherokee Nation and current and former Attorneys General of Cherokee Nation—as well as each individual who has held certain job titles for a period going back nearly 20 years—Defendants should be prepared to search people in equivalently high positions in their companies, and for similar time ranges. Likewise, Defendants should be prepared to search the electronically stored information of a sufficient number of local custodians who worked at the relevant distribution centers, field offices, and pharmacies serving the relevant geographic area.

*Defendants' Position:* The issue of document custodians is premature for discussion at the status conference because the parties have not met and conferred on this issue. That process should proceed first so the parties can attempt to narrow or eliminate any disputes on this issue. However, to provide some further context, in response to the Cherokee Nation's initial proposed list of document custodians, on November 11, 2020, Distributor Defendants provided Cherokee Nation a list of additional custodians derived largely from persons identified by Cherokee Nation in its discovery responses as having relevant information. To date, Distributor Defendants have received no response from Cherokee Nation as to these additional custodians. The number of custodians Distributor Defendants have proposed in this case is consistent with the numbers identified in other opioid litigation.

Through their productions of documents in the MDL, Defendants have already provided Cherokee Nation with hundreds of custodians with relevant information, including many senior employees of the Defendants. Although Cherokee Nation only recently requested the identification of Defendants' custodians in discovery requests it issued on November 11, 2020, to which Defendants' responses are due on December 11, 2020, most Defendants have already provided Cherokee Nation with the names of additional custodians whose documents will be collected and searched for responsive information. The parties must first discuss the issues related to the number, identification and seniority of the custodians in meet and confer sessions and can address the remaining disputes, if any, with the Court at the conclusion of that process.

#### **ANNEX A**

	<b>Third party</b>	<b>Date of Subpoena</b>	<b>Party serving the subpoena</b>
1.	Office of the Chief Medical Examiner for the State of Oklahoma	October 12, 2020	ABDC
2.	Oklahoma Board of Medical Licensure and Supervision	October 13, 2020	Cardinal Health, Inc.
3.	Oklahoma Board of Dentistry	October 13, 2020	Cardinal Health, Inc.
4.	Oklahoma State Board of Osteopathic Examiners	October 13, 2020	Cardinal Health, Inc.
5.	Oklahoma Bureau of Narcotics	October 16, 2020	Walgreen Co.
6.	Oklahoma Department of Human Services	October 27, 2020	ABDC
7.	Oklahoma State Medical Association	October 28, 2020	Cardinal Health Inc.
8.	The Oklahoma Osteopathic Association, Inc.	October 28, 2020	Cardinal Health Inc.
9.	Oklahoma Hospital Association, Inc.	October 28, 2020	Cardinal Health Inc.
10.	Oklahoma Commission on Opioid Abuse	October 28, 2020	Cardinal Health Inc.
11.	Offices of the District Attorney Matt Ballard Rogers	October 29, 2020	Walgreen Co.
12.	District Attorney Kevin D. Buchanan	October 29, 2020	Walgreen Co.
13.	Offices of District Attorney Kevin D. Buchanan	October 29, 2020	Walgreen Co.
14.	Office of Carol Iski, District Attorney	October 29, 2020	Walgreen Co.

	<b>Third party</b>	<b>Date of Subpoena</b>	<b>Party serving the subpoena</b>
15.	Offices of Steve Kunzweiler, District Attorney	October 29, 2020	Walgreen Co.
16.	Office of Orvil Loge, District Attorney	October 29, 2020	Walgreen Co.
17.	Oklahoma Department of Corrections	October 29, 2020	Walgreen Co.
18.	Oklahoma Drug Court for Adair County	October 29, 2020	Walgreen Co.
19.	Oklahoma Drug Court for Cherokee County	October 29, 2020	Walgreen Co.
20.	Oklahoma Drug Court for Craig County	October 29, 2020	Walgreen Co.
21.	Oklahoma Drug Court for Delaware County	October 29, 2020	Walgreen Co.
22.	Oklahoma Drug Court for Mayes County	October 29, 2020	Walgreen Co.
23.	Oklahoma Drug Court for McIntosh County	October 29, 2020	Walgreen Co.
24.	Oklahoma Drug Court for Muskogee County	October 29, 2020	Walgreen Co.
25.	Oklahoma Drug Court of Nowata County	October 29, 2020	Walgreen Co.
26.	Oklahoma Drug Court for Ottawa County	October 29, 2020	Walgreen Co.
27.	Oklahoma Drug Court of Rogers County	October 29, 2020	Walgreen Co.
28.	Oklahoma Drug Court of Sequoyah County	October 29, 2020	Walgreen Co.
29.	Oklahoma Drug Court of Tulsa County	October 29, 2020	Walgreen Co.
30.	Oklahoma Drug Court of Wagoner County	October 29, 2020	Walgreen Co.
31.	Oklahoma Drug Court of Washington County	October 29, 2020	Walgreen Co.
32.	Office of Jack Thorp, District Attorney, District 27	October 29, 2020	Walgreen Co.
33.	Offices of District Attorney, Kenny Wright, District 13	October 29, 2020	Walgreen Co.
34.	Adair County Sheriff	October 30, 2020	McKesson
35.	Adair Police	October 30, 2020	McKesson
36.	Afton Police	October 30, 2020	McKesson
37.	Bartlesville Police	October 30, 2020	McKesson
38.	Big Cabin Police	October 30, 2020	McKesson
39.	Bixby Police	October 30, 2020	McKesson
40.	Boynton Police	October 30, 2020	McKesson
41.	Braggs Police	October 30, 2020	McKesson
42.	Broken Arrow Police	October 30, 2020	McKesson
43.	Catoosa Police	October 30, 2020	McKesson
44.	Chelsea Police	October 30, 2020	McKesson
45.	Cherokee County Sheriff	October 30, 2020	McKesson
46.	Claremore Police	October 30, 2020	McKesson
47.	Collinsville Police	October 30, 2020	McKesson

	<b>Third party</b>	<b>Date of Subpoena</b>	<b>Party serving the subpoena</b>
48.	Coweta Police	October 30, 2020	McKesson
49.	Craig County Sheriff	October 30, 2020	McKesson
50.	Delaware County Sheriff	October 30, 2020	McKesson
51.	Dewey Police	October 30, 2020	McKesson
52.	Disney Police	October 30, 2020	McKesson
53.	Eastern Shawnee Police	October 30, 2020	McKesson
54.	Fairland Police	October 30, 2020	McKesson
55.	Ft. Gibson Police	October 30, 2020	McKesson
56.	Gans Police	October 30, 2020	McKesson
57.	Glenpool Police	October 30, 2020	McKesson
58.	Gore City Police	October 30, 2020	McKesson
59.	Grove Police	October 30, 2020	McKesson
60.	Haskell Police	October 30, 2020	McKesson
61.	Hulbert Police	October 30, 2020	McKesson
62.	Inola Police	October 30, 2020	McKesson
63.	Jay Police	October 30, 2020	McKesson
64.	Jenks Police	October 30, 2020	McKesson
65.	Kansas Police	October 30, 2020	McKesson
66.	Ketchum Police	October 30, 2020	McKesson
67.	Langley Police	October 30, 2020	McKesson
68.	Locust Grove Police	October 30, 2020	McKesson
69.	Marble City Police	October 30, 2020	McKesson
70.	Mayes County Sheriff	October 30, 2020	McKesson
71.	McIntosh County Sheriff	October 30, 2020	McKesson
72.	Miami Police	October 30, 2020	McKesson
73.	Moffett Police	October 30, 2020	McKesson
74.	Muldrow Police	October 30, 2020	McKesson
75.	Muskogee County Sheriff	October 30, 2020	McKesson
76.	Muskogee Police	October 30, 2020	McKesson
77.	Nowata County Sheriff	October 30, 2020	McKesson
78.	Nowata Police	October 30, 2020	McKesson
79.	Okay Police	October 30, 2020	McKesson
80.	Oologah Police	October 30, 2020	McKesson
81.	Ottawa County Sheriff	October 30, 2020	McKesson
82.	Owasso Police	October 30, 2020	McKesson
83.	Porter Police	October 30, 2020	McKesson
84.	Porum Police	October 30, 2020	McKesson
85.	Pryor Police	October 30, 2020	McKesson
86.	Ramona Police	October 30, 2020	McKesson
87.	Rogers County Sheriff	October 30, 2020	McKesson
88.	Roland Police	October 30, 2020	McKesson
89.	Salina Police	October 30, 2020	McKesson
90.	Sallisaw Police	October 30, 2020	McKesson

	<b>Third party</b>	<b>Date of Subpoena</b>	<b>Party serving the subpoena</b>
91.	Sand Springs Police	October 30, 2020	McKesson
92.	Sequoyah County Sheriff	October 30, 2020	McKesson
93.	Skiatook Police	October 30, 2020	McKesson
94.	South Coffeyville Police	October 30, 2020	McKesson
95.	Spavinaw Police	October 30, 2020	McKesson
96.	Sperry Police	October 30, 2020	McKesson
97.	Stillwell Police	October 30, 2020	McKesson
98.	Tahlequah Police	October 30, 2020	McKesson
99.	Tulsa County Sheriff	October 30, 2020	McKesson
100.	Tulsa Police	October 30, 2020	McKesson
101.	Vian Police	October 30, 2020	McKesson
102.	Vinita Police	October 30, 2020	McKesson
103.	Wagoner County Sheriff	October 30, 2020	McKesson
104.	Wagoner Police	October 30, 2020	McKesson
105.	Warner Police	October 30, 2020	McKesson
106.	Washington County Sheriff	October 30, 2020	McKesson
107.	Webbers Falls Police	October 30, 2020	McKesson
108.	West Siloam Police	October 30, 2020	McKesson
109.	Westville Police	October 30, 2020	McKesson
110.	Oklahoma Drug Court for McIntosh County	November 2, 2020,	Walgreen Co.
111.	Indian Health Service, U.S. Department of Health and Human Services	November 10, 2020	Wal-Mart Stores, Inc.
112.	Oklahoma Drug Court for Adair County	November 12, 2020	Walgreen Co.
113.	Oklahoma Drug Court for Cherokee County	November 12, 2020	Walgreen Co.
114.	Oklahoma Drug Court for Craig County	November 12, 2020	Walgreen Co.
115.	Oklahoma Drug Court of Tulsa County	November 12, 2020	Walgreen Co.
116.	Oklahoma Drug Court of Wagoner County	November 12, 2020	Walgreen Co.
117.	Adair Fire Department	December 1, 2020	McKesson
118.	Air EMS, Inc.	December 1, 2020	McKesson
119.	Air Evac Lifeteam – Claremore	December 1, 2020	McKesson
120.	Bartlesville Ambulance	December 1, 2020	McKesson
121.	Bartlesville Fire Department	December 1, 2020	McKesson
122.	Berryhill Fire Protection District	December 1, 2020	McKesson
123.	Bixby Fire Department	December 1, 2020	McKesson
124.	Broken Arrow Fire Department EMS	December 1, 2020	McKesson
125.	Butler Volunteer Fire Department	December 1, 2020	McKesson
126.	Catoosa Fire Department	December 1, 2020	McKesson
127.	Checotah EMS	December 1, 2020	McKesson
128.	Cherokee Nation EMS	December 1, 2020	McKesson

	<b>Third party</b>	<b>Date of Subpoena</b>	<b>Party serving the subpoena</b>
129.	Childrens Hospital at St. Francis	December 1, 2020	McKesson
130.	Chouteau Fire Department	December 1, 2020	McKesson
131.	Claremore Fire Department	December 1, 2020	McKesson
132.	Cleora Fire Department	December 1, 2020	McKesson
133.	Collinsville Fire Department	December 1, 2020	McKesson
134.	Collinsville Rural Fire Protection	December 1, 2020	McKesson
135.	Commerce Fire Department	December 1, 2020	McKesson
136.	Cookson Volunteer Fire Dept.	December 1, 2020	McKesson
137.	Copan Fire Department	December 1, 2020	McKesson
138.	Coweta Fire Department EMS	December 1, 2020	McKesson
139.	Cowskin Fire Department	December 1, 2020	McKesson
140.	Dewey Volunteer Fire Department	December 1, 2020	McKesson
141.	EMSA-East Division	December 1, 2020	McKesson
142.	Eucha Volunteer Fire District	December 1, 2020	McKesson
143.	First Flight	December 1, 2020	McKesson
144.	Glenpool Fire Department	December 1, 2020	McKesson
145.	Grove EMS	December 1, 2020	McKesson
146.	Grove Fire Department	December 1, 2020	McKesson
147.	Health Ride	December 1, 2020	McKesson
148.	Hickory Grove Volunteer Fire Department	December 1, 2020	McKesson
149.	Illinois River VFD	December 1, 2020	McKesson
150.	Inola Fire Department	December 1, 2020	McKesson
151.	INTEGRIS Miami EMS	December 1, 2020	McKesson
152.	Jay EMS	December 1, 2020	McKesson
153.	Jenks Fire & Rescue	December 1, 2020	McKesson
154.	Kenwood Volunteer Fire Association	December 1, 2020	McKesson
155.	Lakemont Volunteer Fire Department	December 1, 2020	McKesson
156.	Lenapah Volunteer Fire Department	December 1, 2020	McKesson
157.	Liberty Volunteer Fire Department EMRA	December 1, 2020	McKesson
158.	Limestone Fire Protection District	December 1, 2020	McKesson
159.	Mayes Emergency Svc Trust Auth	December 1, 2020	McKesson
160.	MedSupport, LLC	December 1, 2020	McKesson
161.	Mercy Regional of Oklahoma	December 1, 2020	McKesson
162.	Miami Fire Department	December 1, 2020	McKesson
163.	Miller EMS – Owasso	December 1, 2020	McKesson
164.	Monkey Island Fire Protection Dist	December 1, 2020	McKesson
165.	Muldrow Fire Department	December 1, 2020	McKesson

	<b>Third party</b>	<b>Date of Subpoena</b>	<b>Party serving the subpoena</b>
166.	Muskogee County EMS	December 1, 2020	McKesson
167.	Muskogee Fire Department	December 1, 2020	McKesson
168.	Northeastern Health System	December 1, 2020	McKesson
169.	Nowata EMS	December 1, 2020	McKesson
170.	Nowata Fire Department EMRA	December 1, 2020	McKesson
171.	NW Rogers County Fire Protection	December 1, 2020	McKesson
172.	Oak Grove Fire Protection District	December 1, 2020	McKesson
173.	Okay Fire Department	December 1, 2020	McKesson
174.	Oklahoma Medical Transport	December 1, 2020	McKesson
175.	Onapa Volunteer Fire Department	December 1, 2020	McKesson
176.	Oologah-Talala EMS District	December 1, 2020	McKesson
177.	Owasso Fire Department EMS	December 1, 2020	McKesson
178.	Owens & Company Fire	December 1, 2020	McKesson
179.	Pafford EMS of Oklahoma	December 1, 2020	McKesson
180.	Pafford EMS of Oklahoma	December 1, 2020	McKesson
181.	Porter Fire Department	December 1, 2020	McKesson
182.	Porum Landing Fire Department	December 1, 2020	McKesson
183.	Porum Volunteer Fire Department	December 1, 2020	McKesson
184.	Pryor Fire Department	December 1, 2020	McKesson
185.	Quapaw Nation Fire/EMS	December 1, 2020	McKesson
186.	Quapaw Volunteer Fire Department	December 1, 2020	McKesson
187.	Rock Fire Department	December 1, 2020	McKesson
188.	Roland Fire & Rescue	December 1, 2020	McKesson
189.	Rolling Hills Fire Department	December 1, 2020	McKesson
190.	Sand Springs Fire Department	December 1, 2020	McKesson
191.	Seneca-Cayuga Fire & Rescue	December 1, 2020	McKesson
192.	Sequoyah County EMRA	December 1, 2020	McKesson
193.	Skiatook Fire and EMS	December 1, 2020	McKesson
194.	Sperry Fire Department	December 1, 2020	McKesson
195.	Spring Valley Volunteer Fire Dept.	December 1, 2020	McKesson
196.	Stone Bluff VFD	December 1, 2020	McKesson
197.	Tullahassee Volunteer Fire Dept	December 1, 2020	McKesson
198.	Tulsa Fire Department	December 1, 2020	McKesson
199.	Tulsa Fire Department	December 1, 2020	McKesson
200.	Tulsa Life Flight	December 1, 2020	McKesson
201.	Tulsa Police Department	December 1, 2020	McKesson
202.	Verdigris Fire Protection District	December 1, 2020	McKesson
203.	Vinita Fire Department	December 1, 2020	McKesson

	<b>Third party</b>	<b>Date of Subpoena</b>	<b>Party serving the subpoena</b>
204.	Wagoner EMS	December 1, 2020	McKesson
205.	Wagoner Fire Department	December 1, 2020	McKesson
206.	Warner Fire Department	December 1, 2020	McKesson
207.	Adair County Tri Community Fire Department (Stilwell, OK)	December 7, 2020	McKesson
208.	Bell Fire Department (Stilwell, OK)	December 7, 2020	McKesson
209.	Chance Community Fire Department Inc. (Westville, OK)	December 7, 2020	McKesson
210.	Christe Proctor Volunteer Fire Department (Stilwell, OK)	December 7, 2020	McKesson
211.	Greasy Volunteer Fire Dept (Bunch, OK)	December 7, 2020	McKesson
212.	Highway 100 West Volunteer Fire Department (Stilwell, OK)	December 7, 2020	McKesson
213.	Hwy 51 West Volunteer Fire Department (Stilwell, OK)	December 7, 2020	McKesson
214.	Kirk Mountain Fire and Rescue Inc. (Stilwell, OK)	December 7, 2020	McKesson
215.	Mid County Fire Department (Westville, OK)	December 7, 2020	McKesson
216.	Stilwell Fire Department (Stilwell, OK)	December 7, 2020	McKesson
217.	Watts Fire Dept (Watts, OK)	December 7, 2020	McKesson
218.	Westville Fire Department (Westville, OK)	December 7, 2020	McKesson
219.	Gideon Fire Department Inc. (Tahlequah, OK)	December 7, 2020	McKesson
220.	Keys Volunteer Fire Department (Park Hill, OK)	December 7, 2020	McKesson
221.	Oaks Volunteer Fire Department (Oaks, OK)	December 7, 2020	McKesson
222.	Peggs Volunteer Fire Department (Peggs, OK)	December 7, 2020	McKesson
223.	Sparrow Hawk Village Volunteer Fire Department (Tahlequah, OK)	December 7, 2020	McKesson
224.	Tahlequah Fire Dept (Tahlequah, OK)	December 7, 2020	McKesson
225.	Welling Tri Community Fire Department (Welling, OK)	December 7, 2020	McKesson
226.	Woodall Volunteer Fire Department (Tahlequah, OK)	December 7, 2020	McKesson
227.	Big Cabin Fire Dept (Big Cabin, OK)	December 7, 2020	McKesson
228.	Bluejacket Vfd (Bluejacket, OK)	December 7, 2020	McKesson
229.	Carselowey Community Vfd (Vinita, OK)	December 7, 2020	McKesson

	<b>Third party</b>	<b>Date of Subpoena</b>	<b>Party serving the subpoena</b>
230.	Centralia Volunteer Fire Company (Vinita, OK)	December 7, 2020	McKesson
231.	Eastern State Hospital (Vinita, OK)	December 7, 2020	McKesson
232.	Welch Volunteer Fire Department (Welch, OK)	December 7, 2020	McKesson
233.	Bernice Fire Dept (Bernice, OK)	December 7, 2020	McKesson
234.	Butler Volunteer Fire Department (Jay, OK)	December 7, 2020	McKesson
235.	Flint Ridge Volunteer Fire Department (Kansas, OK)	December 7, 2020	McKesson
236.	Jay Fire Dept (Jay, OK)	December 7, 2020	McKesson
237.	Kansas Fire Department (Kansas, OK)	December 7, 2020	McKesson
238.	West Siloam Springs Rural Volunteer Fire Department (Colcord, OK)	December 7, 2020	McKesson
239.	Zena Volunteer Fire Department (Jay, OK)	December 7, 2020	McKesson
240.	Cabin Creek Fire District (Langley, OK)	December 7, 2020	McKesson
241.	Chimney Rock Fire Dept (Rose, OK)	December 7, 2020	McKesson
242.	Chouteau Vfd (Chouteau, OK)	December 7, 2020	McKesson
243.	Diamond Head Lone Chapel Fire Department (Pryor, OK)	December 7, 2020	McKesson
244.	Flat Rock Fire Protection Association (Chouteau, OK)	December 7, 2020	McKesson
245.	Langley Volunteer Fire Department (Langley, OK)	December 7, 2020	McKesson
246.	Leach Volunteer Fire Department (Rose, OK)	December 7, 2020	McKesson
247.	Locust Grove Fire Department (Locust Grove, OK)	December 7, 2020	McKesson
248.	Salina Fire Department (Salina, OK)	December 7, 2020	McKesson
249.	Spavinaw Fire Dept (Spavinaw, OK)	December 7, 2020	McKesson
250.	Strang Community Fire Department (Strang, OK)	December 7, 2020	McKesson
251.	Tiajuana Community Area Fire Protection Inc. (Disney, OK)	December 7, 2020	McKesson
252.	Boynton Vol Fire Department (Boynton, OK)	December 7, 2020	McKesson
253.	Braggs Volunteer Fire Department (Braggs, OK)	December 7, 2020	McKesson
254.	Brushy Mountain Volunteer Fire Department (Muskegee, OK)	December 7, 2020	McKesson

	<b>Third party</b>	<b>Date of Subpoena</b>	<b>Party serving the subpoena</b>
255.	Council Hill Vol Fire Dept (Council Hill, OK)	December 7, 2020	McKesson
256.	Fort Gibson Fire Department (Fort Gibson, OK)	December 7, 2020	McKesson
257.	Gooseneck Bend Fire Protection District (Muskogee, OK)	December 7, 2020	McKesson
258.	Haskell Fire Department (Haskell, OK)	December 7, 2020	McKesson
259.	Keefeton Volunteer Fire Department Inc. (Muskogee, OK)	December 7, 2020	McKesson
260.	Mountain View Volunteer Fire Department (Muskogee, OK)	December 7, 2020	McKesson
261.	Muskogee Fire Department (Muskogee, OK)	December 7, 2020	McKesson
262.	Norwood Rural Volunteer Fire Department (Ft. Gibson, OK)	December 7, 2020	McKesson
263.	Oktaha Fire Dept (Oktaha, OK)	December 7, 2020	McKesson
264.	Summit Volunteer Fire Department (Muskogee, OK)	December 7, 2020	McKesson
265.	Taft Volunteer Fire Department (Taft, OK)	December 7, 2020	McKesson
266.	Wainwright Volunteer Fire Department (Wainwright, OK)	December 7, 2020	McKesson
267.	Webbers Falls Volunteer Fire Department (Webbers Falls, OK)	December 7, 2020	McKesson
268.	Delaware Volunteer Fire Department (Delaware, OK)	December 7, 2020	McKesson
269.	South Coffeyville Fire Department (Coffeyville, OK)	December 7, 2020	McKesson
270.	Cleora Community Fire Dept (Afton, OK)	December 7, 2020	McKesson
271.	Chelsea Fire Department (Chelsea, OK)	December 7, 2020	McKesson
272.	Foyil Fire Protection District (Foyil, OK)	December 7, 2020	McKesson
273.	New Alluwe Volunteer Fire Department Assd (Alluwe, OK)	December 7, 2020	McKesson
274.	Tiawah Fire Department (Claremore, OK)	December 7, 2020	McKesson
275.	Tri District Fire Protection District 1 (Claremore, OK)	December 7, 2020	McKesson
276.	Verdigris Fpd (Claremore, OK)	December 7, 2020	McKesson
277.	Blackgum Mountain Volunteer Fire Department (Vian, OK)	December 7, 2020	McKesson
278.	Brent Rural Fire Department (Sallisaw, OK)	December 7, 2020	McKesson
279.	Brushy Volunteer Fire Department (Sallisaw, OK)	December 7, 2020	McKesson

	<b>Third party</b>	<b>Date of Subpoena</b>	<b>Party serving the subpoena</b>
280.	Central High Fire Association (Sallisaw, OK)	December 7, 2020	McKesson
281.	Chicken Creek Volunteer Fire Department (Cookson, OK)	December 7, 2020	McKesson
282.	Gore Fd (Gore, OK)	December 7, 2020	McKesson
283.	Lee Creek Fire District (Muldrow, OK)	December 7, 2020	McKesson
284.	Maple Rural Fire District Inc. (Muldrow, OK)	December 7, 2020	McKesson
285.	Marble City Volunteer Fire Association (Marble City, OK)	December 7, 2020	McKesson
286.	Mckey Rural Firefighters Association (Sallisaw, OK)	December 7, 2020	McKesson
287.	Moffett Vfd (Moffett, OK)	December 7, 2020	McKesson
288.	Nicut Rural Fire District (Muldrow, OK)	December 7, 2020	McKesson
289.	Redland Fire Department (Muldrow, OK)	December 7, 2020	McKesson
290.	Rfpd 1 (Gore, OK)	December 7, 2020	McKesson
291.	Sallisaw Volunteer Fire Department (Sallisaw, OK)	December 7, 2020	McKesson
292.	Vian Volunteer Fire Department (Vian, OK)	December 7, 2020	McKesson
293.	West Tenkiller Fire Department (Gore, OK)	December 7, 2020	McKesson
294.	Berryhill Fire Protection District (Tulsa, OK)	December 7, 2020	McKesson
295.	Country Corner Fire District (Sperry, OK)	December 7, 2020	McKesson
296.	Green country Vfd (Sand Springs, OK)	December 7, 2020	McKesson
297.	Keystone Volunteer Fire Department (Sand Springs, OK)	December 7, 2020	McKesson
298.	Mannford Fire Department (Mannford, OK)	December 7, 2020	McKesson
299.	Morgans Corner Volunteer Fire Department (Skiatook, OK)	December 7, 2020	McKesson
300.	Osage Hills Volunteer Fire Dept (Tulsa, OK)	December 7, 2020	McKesson
301.	Prairie Meadow Hose Company (Collinsville, OK)	December 7, 2020	McKesson
302.	Turley Fire and Rescue (Tulsa, OK)	December 7, 2020	McKesson
303.	Zink Fire Department (Skiatook, OK)	December 7, 2020	McKesson
304.	Taylor Ferry Fire Department (Wagoner, OK)	December 7, 2020	McKesson
305.	Toppers Fire Department Inc. (Wagoner, OK)	December 7, 2020	McKesson

	<b>Third party</b>	<b>Date of Subpoena</b>	<b>Party serving the subpoena</b>
306.	Tullahassee Fire Dept (Tullahassee, OK)	December 7, 2020	McKesson
307.	Whitehorn Fire Department (Wagoner, OK)	December 7, 2020	McKesson
308.	Ochelata Volunteer Fire Department (Ochelata, OK)	December 7, 2020	McKesson
309.	Oglesby Civil Defense Volunteer Fire Department (Ramona, OK)	December 7, 2020	McKesson
310.	Osage Hills Rural Firefighter Association Inc. (Bartlesville, OK)	December 7, 2020	McKesson
311.	Ramona Fire Department (Ramona, OK)	December 7, 2020	McKesson
312.	Washington County Civil Defense Fire Department (Bartlesville, OK)	December 7, 2020	McKesson

Dated: December 7, 2020.

Respectfully Submitted,

*/s/ Tyler Ulrich*

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*Attorneys for Plaintiff  
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**CERTIFICATE OF SERVICE**

I hereby certify that on December 7, 2020, a true and correct copy of the foregoing document was served on counsel of record for defendants in this action via e-mail.

*/s/ Tyler Ulrich*  
\_\_\_\_\_  
Tyler Ulrich